

No. 17,446 ✓

**United States Court of Appeals  
For the Ninth Circuit**

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NATIONAL UNION FIRE INSURANCE Co.,  
*Appellant,*

vs.

LUISA SANTOS,

*Appellee.*

Appeal from Final Judgment of the  
District Court of Guam  
Civil No. 32-60

**OPENING BRIEF OF APPELLANT  
NATIONAL UNION FIRE INSURANCE COMPANY**

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**JURISDICTION**

The United States Court of Appeals for the Ninth Circuit has jurisdiction of this appeal pursuant to 28 U.S.C. sections 1291 and 1294, and 48 U.S.C. section 1424; said appeal being from a judgment of \$10,000.00.

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**STATEMENT OF THE CASE**

Appellees sued in the District Court of Guam upon a policy of fire insurance issued to appellant. (Pl. Ex.

1.) The policy insured a one story building, located in Merizo, Guam, in the amount of \$8,000.00; Endorsement No. 2 of the policy specifically declaring that with respect to the insurance on the building the policy was a Valued Policy issued in accordance with sections 43356 and 43408 of the Government Code of Guam. (Pl. Ex. 1.) The remaining \$2,000.00 of the policy covered the contents of the building. (Pl. Ex. 1.)

The Pre-Trial resulted in issues pertaining to insurable interest and coverage. It was stipulated that fire totally destroyed the building and contents covered by this policy.

Shortly before the fire appellee homesteaded this building, her residence, and taking the value assessed by the government in her homestead declaration, she declared the property to be valued at \$3,210.00. (T. 21-22; 52-53.)

Appellee testified that she had been living with Gregorio Sanchez for three years, since before the house covered by the policy was built, and that Sanchez did not own any of the personal property or any part of the house. (T. 39.) Appellee admitted Sanchez contributed towards the purchase of some of this property, but she claimed that Sanchez gave it to her. (T. 40.) Appellee further testified she owned the house that burned. (T. 54.) Appellee specifically testified to all items of the contents of said building as set forth in Plaintiff's Exhibit No. 3, according to her estimated value of her loss; excepting the lump sum testimony of \$500.00 for clothing, pillow cases,

bed sheets, bedspreads and towels, appellee's loss of personal property amounted to \$1,600.00. (Pl. Ex. 2; T. 26-30.) (Pl. Ex. 2 contains error in addition; \$2,122.50 should be \$2,100.00.) In computing her estimate of \$500.00 for the clothing, etc. appellee included 15 dresses of her 13-year-old married daughter. (T. 29; 50.) Appellee testified that this daughter had 15 dresses, 5 of which were new, the highest cost of any dress being \$12.95, but some cost less. (T. 49.)

Appellant's sole witness, Gregorio Sanchez, testified that he had been living with appellee for three years (T. 66-67) and contributed 50% of support of the household, (T. 69) and that he made payments on some of the property destroyed in the fire. (T. 72.) Then, appellant commenced to question Sanchez about who built the house that burned down; (T. 72-73) the Court refused to allow appellant to question Sanchez as to what he contributed to the building or to ownership thereof. (T. 73-74.)

The jury returned its verdict for appellee, \$8,000.00 for real property and \$2,000.00 for personal property (T. 96-97), and appellant appealed from this judgment. (T. 12.)

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#### SPECIFICATION OF ERRORS

1. The Court erred in refusing to allow appellant to examine its sole witness with regard to whether he possessed any interest in the insured real property (pp. 72-74)

(Testimony of Gregorio Sanchez)

“Q. Now who built that house?

A. Pardon me?

- Q. Who built the house that burned down?  
 A. Who built?  
 Q. Uh huh.  
 A. A carpenter by the name of Vicente—Jose Tapasna.  
 Q. He the only person that worked on that house?  
 A. I worked and some free labor, free hands.  
 Q. Where did the material come from?  
 A. It came from various stores in Agana.  
 Q. Was it all new material?  
 A. Approximately all new.  
 Q. All new roofing?  
 A. Right.  
 Q. Roofing iron, everything all new. It came from various stores in Agana?  
 A. Right.  
 Q. Did you buy any of it?  
 A. Pardon me?  
 Q. Did you buy any of it?  
 A. Some.  
 Q. Can you tell us what you bought and where you bought it?

Mr. Barrett. Your Honor, this has gone on for a long time and I fail to see the relevancy of what Mr. Crain is driving at, what went into the house, where the materials came from. The house, it has been testified, belonged to Mrs. Santos. If he can prove it doesn't belong to her, that is something else.

Mr. Crain. I think we are entitled to inquire into it. I am not sure who any of this property belongs to at the moment.

The Court. You lay your foundation. Do you know that she did not, the insured did not own the real property?



Mr. Crain. Perhaps she didn't own the sole interest in it and especially the personal property.

The Court. I am going to limit your questions of this witness, if you intend to lay a foundation that someone else owns the personal property other than the witness. As far as the real property is concerned, that speaks for itself, is a matter of record and the proof of loss and policy, the real property, itself. If it can be shown you are putting this witness on the stand to bring out the ownership of the personal property, that the personal property, this was not owned by the insured, it is owned by someone else, let's get right down to the point."

2. **The evidence is insufficient to sustain the jury's verdict and the judgment allowing appellee \$2,000.00 for loss of personal property**

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#### **SUMMARY OF ARGUMENT**

An insured must have an insurable interest in the property, and a Valued Policy while settling the value of the property in the event of its total destruction does not determine the extent of the insured's interest in said property. In the event the insured possesses less than the total interest in the insured property the insured can recover, even under a valued policy, only to the extent of her interest. The Court's refusal to allow appellant to examine its sole witness with regard as to how much material the witness purchased and contributed towards the insured building and whether he possessed any interest therein deprived appellant of showing that appellee possessed less than 100% interest in the insured building.

With relation to the personal property, appellee was permitted to recover for the interests of her married minor daughter; appellee had no insurable interest in said daughter's clothing.

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### ARGUMENT

1. THE COURT ERRED IN REFUSING TO ALLOW EXAMINATION OF SANCHEZ'S CONTRIBUTIONS TO THE REAL PROPERTY AND OWNERSHIP FOR APPELLEE EVEN ON A VALUED POLICY CAN RECOVER ONLY TO THE EXTENT OF HER INTEREST AND NOT THE FACE AMOUNT OF THE POLICY

An insured must possess an insurable interest in the property insured, and section 43328 of the Government Code of Guam so provides:

“INSURABLE INTEREST.

(a) Every interest in property or any relation thereto, or any liability in respect thereof, of such a nature that a contemplated peril might directly damnify the insured is an insurable interest . . .

(c) If the insured has no insurable interest, the contract is void.”

A partial interest in property does not entitle such an insured to recover for the destruction of the entire property. Sections 43352 and 43329 of the Government Code respectively read:

“COVERAGE. When the name of the person intended to be insured is specified in a policy it can be applied only to his interest.

MEASURE. Except in the case of property held by the insured as a carrier or depository,

the measure of an insurable interest in property is the extent to which the insured might be damaged by loss of, or injury to, the property.”

The instant policy of fire insurance was issued in accordance with the two following Guam Government Code provisions:

“SECTION 43356. OPEN OR VALUED. A policy is either:

(a) An open policy which is one wherein the value of the subject matter is not agreed upon but is left to be ascertained in case of loss. An open policy shall not be written on real property for fire insurance or miscellaneous insurance.

(b) A valued policy which is one containing on its face an expressed agreement that the thing insured shall be valued at a specified sum.”

“SECTION 43408. TOTAL LOSS BY FIRE OR MISCELLANEOUS INSURANCE: RECOVERY OF FULL AMOUNT.

A fire or miscellaneous insurance policy, in case of a total loss of any risk insured under the classes specified in this Title as fire or miscellaneous insurance shall be held and considered to be a liquidated demand against the insurer taking such risk for the full amount stated in such policy, or the full amount upon which the insurer charges, collects or receives a premium; provided the provisions of this article shall not apply to personal property.”

In *Lighting Fixture Supply Co. v. Pacific Fire Ins. Co.* (1932), 176 La. 499, 146 So. 35, the Supreme Court of Louisiana had before it the problem of whether the

insured could recover the face amount of a valued policy of fire insurance where the insured's lease provided that the improvements to the real property were to become the lessor's upon the expiration of the lease. The valued policy law of Louisiana at the time provided:

“Whenever any policy of insurance against loss of fire is hereafter written or renewed, on property immovable by nature and situated in this State, and the said property shall be either partially damaged or totally destroyed, without criminal fault on the part of the insured or his assigns, the value of the policy as assessed by the insurer or as by him permitted to be assessed at the time of the issuance of the policy, shall be conclusively taken to be the true value of the property at the time of the issuance of the policy and the true value of the property at the time of the damage or destruction. . . .” (La. Acts of 1900, No. 135.)

In holding that the insured was not entitled to recover the face amount of the policy, but only of its interest in the property the Court stated: “There is nothing in the valued policy law which prohibits the insurer from contesting the extent of the insurable interest of the insured in the immovable described in the policy. The statute presumes that the insured is the owner of the property insured, and merely prescribes a rule of public policy for establishing the pecuniary loss suffered by its partial or total destruction by fire . . .”. (146 So. 38.) See also: *Lyles v. National Liberty Ins. Co.* (1938), 182 So. 181, 183.

In refusing to allow appellant to ascertain the extent of Sanchez's contributions to the building and to even question him as to ownership of the building deprived appellant of the opportunity of ascertaining the extent of appellee's insurable interest.

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**2. THE COURT'S REQUIREMENT THAT APPELLANT LAY A FOUNDATION FOR SANCHEZ TO TESTIFY WAS IN ERROR IN THAT THE FOUNDATION HAD BEEN LAID**

In discussing the laying of a foundation Wigmore states:

"The witness, before he refers to the matter in hand, must make it appear that he had the requisite opportunities to obtain correct impressions on the subject; and the first questions put to him should be and usually are directed to laying this foundation. . . ."

2 Wigmore on Evidence 758.

Sanchez had already testified to having lived with appellee for three years, to having worked on the construction of the house and to having purchased some of the materials that went into the construction of the house. (T. 71, 73.) It is difficult to comprehend what more of a foundation appellant could have laid, especially since Sanchez was being asked what *he* bought.

3. APPELLEE POSSESSED NO INSURABLE INTEREST  
IN HER MARRIED DAUGHTER'S CLOTHING

The Civil Code of Guam, section 202, reads:

“The parent, as such, has no control over the property of the child.”

And section 204 provides:

“The authority of a parent ceases . . . (2) Upon the marriage of the child; . . .”

Such marriage of appellee's minor married daughter resulted in her emancipation. *Easterly v. Cook* (1934), 140 Cal. App. 115, 121, 35 P. 2d 164. Therefore, the value of this daughter's clothing must be excluded in determining whether the jury's verdict of \$2,000 for appellee's personal property is supported by the evidence.

All the items of personal property testified to are contained in Plaintiff's Exhibit 3 (See T. pp. 26-30); excepting the clothing, pillow cases, bed sheets, bedspreads and towels, such amounts to only \$1,600.00. In breaking down the \$500.00 value of the last mentioned items, appellee testified such was composed of the following at the following figures: curtains \$10 (T. 51); towels \$24 (T. 51); bedspreads \$39 (T. 47); sheets \$25 (T. 47); pillow cases \$15 (T. 47); appellee's new dresses \$30.85 (T. 48); 12 older dresses, some costing more than \$12.95 and some less (T. 48); appellee's shoes \$30 (T. 49-50); baby's clothes \$30 (T. 50). The total of these items specifically testified to amounts to only \$203. Appellee did not establish the value of her other 12 dresses and she could not include

the value of her married daughter's 15 dresses. The evidence therefore does not support the jury's conclusion that appellee suffered a loss of \$400 in personal property.

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### CONCLUSION

Appellant having been deprived of an opportunity of ascertaining the extent of appellee's interest in the real property, and the evidence not supporting the jury's verdict as to appellee's personal property loss, it is respectfully submitted that the judgment be reversed and a new trial ordered.

Dated, San Francisco, California,  
February 5, 1962.

Respectfully submitted,

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(Appendix Follows.)





**Appendix.**



## Appendix

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	Received in Evidence
Plaintiff's Exhibit #1	13
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Defendant's Exhibit A	65

